

THE
TRIAL

OF

M^R MORDAUNT,

Second Son to JOHN Earl of

PETERBURGH,

AT

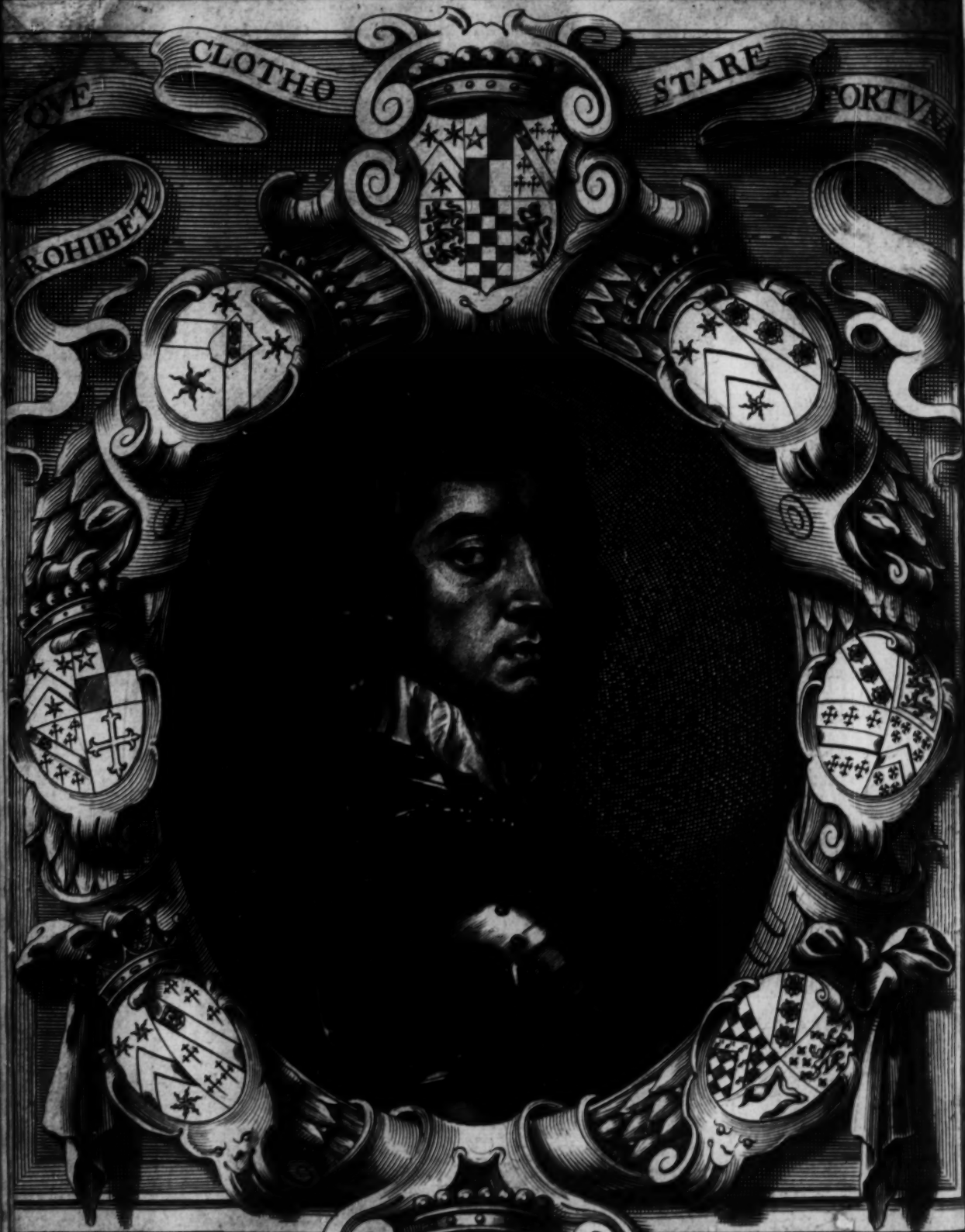
The pretended High Court of Justice in
Westminster-Hall, the first and second
of June, 1658.

With some Passages before and after it.

L O N D O N,

Printed by JAMES FLESHER,

1 6 6 1.



*Illustrissimo Cavaliere
 di Miland Barone de Wygato
 Windsor e Luogo Tenente*

*Giovanni Viconte Mordaunt
 Contestabile del Real Castello
 del Contado di Surrey.*

THE TRIAL

OF M. MORRIS

Second Edition, with additions
BY THE AUTHOR

A
The proceedings in the Court of Sessions in
the case of the People v. Morris, &c.


Printed by James F. Fisher,
No. 10, Nassau Street, New York.

1854



T O
The Right Honourable
E L I Z A B E T H
Countess Dowager of
P E T E R B U R G H.

MADAM,

AVING the Original of my Lord Viscount
MORDAUNT'S Trial by me, I
believ'd it a Duty to my Country, to publish
so Signal, so great and Generous an Action:
that in case Our Nation be traduc'd by
Strangers, for so low and mean a Compliance under that
horrid **USURPER** and **TYRANT**, **CROM-**
WELL; we may be able to produce upon record as Noble
a list of Martyrs and Heroick Spirits, as ever (the number
of years considered) suffered for any unfortunate Prince in
Europe.

And, Madam, although my Lord Your Son appears
not in this Calender in Bloudy Letters, yet, to Your fuller
satisfaction, he will ever be Registred in Golden ones;
the declension of **Cromwell's** Fortune and Family taking
B its

The Epistle DEDICATORY.

its Visible beginning from my Lord Mordaunt's Escape, who was mark'd out a Victim for the Nobility, as Dr Hewet and S^r Henry Slingsby were for the Gentry and Clergie: and his Deliverance had this of singular in it, that having set up his rest on his Defence, he was clear'd by that bloody pretended High Court of Justice, and remains Recorded the first Precedent of that Nature.

To whom then can I dedicate this Memorial so properly as to Your Ladyship, the Noble Stock from whom this Branch proceeds? And indeed this Remarkable Action was an Honour to Your Family (though ne're so fertile for high Atchievements) as well as to his own, and none can say which of Your Houses has more right to the Glory of it, the Howard, or Mordaunt.

To be particular in the Relation of this were needless, there being thousands of Witnesses, and Westminster-Hall scarce ever so throng'd: Yet I cannot omit to observe it was manifest to all present, he knew to speak, as well as how to attempt or die.

'Tis now, Madam, visible that God preserv'd Your Son for greater Actions, which to Your lasting comfort You will alwaies remember: How after his unexpected and almost Miraculous Escape from the Axe, he calmly undertook a second worthy attempt; the uniting of two long-jarring Parties,

The Epistle DEDICATORY.

Parties, at the time when the Consternation was so universal upon mens spirits, that few (though otherwise honest) would hear what he design'd (so great a regard had men in those daies to what they desir'd should be thought Prudence.) Upon which Conjunction he founded the certainty of a Noble Warre, or a healing Peace.

The considerable Rising of S^r George Booth satisfies he was not mistaken in the first; and the happy composition of all Our Differences by his Ma^{ties} Restauration, evinces his foresight Prophetick as to the other.

*I protest, Madam, I cannot without some amazement reflect upon the Providences attended him, by Sea, by Land, in all his Concealments and Negotiations: and after he had been so often and publicly proclaim'd **Traitor**, and the Coasts watch'd to take him, he never in the least declin'd any Risque or Hazzard whatsoever, though he knew Death attended him every Minute if he came to be discover'd; but with a quiet Resignation prosecuted what his heart was set upon, his Ma^{ties} Restauration, and his Country's Liberty.*

How great and Eminent an Instrument he has been towards His Ma^{ties} Restauration, what Employments and Transactions have been committed to his Prudence and Resolution, and how fortunately he has acquitted himself of those great Trusts, and what faithful Services he has ren-

The Epistle DEDICATORY.

dred the Crown, is doubtless known to all who pretend to business; else I could not but wish all good Fortune and Success to that Merit and Courage which first broke the Ice, and gave Reputation to the Counsels and Party of our long-banish'd SOVERAIGN.

But, Madam, Your Family will finde greater Rewards from His Ma^y then I dare express: In confidence of which I have no other wish, then humbly to beseech Your Ladyship to look on me as

Madam,

The most Obedient

of all your Servants,

T. W.

T H E
Trial of M^r MORDAUNT

A T
The pretended High Court of Justice.



Pril 1. 1658. M^r *Mordaunt* was by a Guard of Souldiers taken in his Bed at *Berkshire-House*, and carried directly to the *Protector*. All his Writings were then seiz'd on, and never returned. He was for that time dismiss'd upon his Honour, to appear upon Summons; and remained at *Berkshire-House* till the fifteenth: when after some hours Examination, he was committed for *High-Treason* to the Tower. During which fourteen daies time M^r *Stapeley*, who was one of the Witnesse against him, was never pleas'd so much as to acquaint him with his Danger, or his own Examination, though he was Prisoner at large, and lay next door to him. This was the reason made M^r *Mordaunt* so secure, believing that a Gentleman could not wrong him so much, as to accuse him, and not give him notice of it.

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His Imprisonment in the Tower was the severest that ever was heard of for the time: He was ever close, but the last three weeks had constantly an Officer and a Souldier by his Bed-side, locked in with him; two Keepers, having several Keys, so that, but by joynt consent, no person could be admitted to him: and lest this was not sufficient, he had two Souldiers at the house doors day and night. His *Ladie's* being with him made this unheard-of Cruelty unsupportable, She being likewise stript and search'd by women sworn to that purpose; and her hair pull'd about her ears to find Papers. As himself likewise afterward, and his Servants, had all their Clothes cut and opened; yet nothing could be found, which extremely enrag'd the Officer. His very *Prayers* were not private, nor had he one hour free from disturbance when he was providing for his Trial, so insolent were the Souldiers with him.

Till within two daies of his Trial he was permitted neither Pen nor Ink: And to the Lieutenant Colonel (whose name was *Miller*) who gave him so short a summons to prepare for such a Defence, he express'd his dissatisfaction in point of time, for so serious a Work,
and

and desired Counsel. But the Lieutenant of the Tower refus'd his hand to their Warrant for their safe return; so he had none, but immediately said he was resolved not to own the Court, nor that way of Trial.

One usage was so barbarous I cannot omit it. The night before his Trial he sat up late to provide his Defence, committing himself into the hands of God, as verily believing by their Cruelties shewn he was ordained for Death. Scarce was this persecuted person asleep by his *Lady*, but a Captain going the round, commanded the Souldiers to wake him, and make him speak: they obeyed the command, opened the curtain, and stirr'd him. His *Lady* at first feared foul play, but compos'd her self again; and he waking, demanded the reason of such insolence. No answer was given, but that it was by Command. Are ye commanded, saies he, to keep me waking till my Trial? Cozen not your selves, by Gods assistance, these insolencies will not so distract me, but that I shall be able to make a good and just defence. To this the Souldiers made excuse, saying, they durst not disobey Commands.

As he was led out by a Guard, the Countess

of *Peterburgh*, his Mother, sent his young and onely Son *Charles* to receive his last Blessing. The Child, and the Servants that attended him, met M^r *Mordaunt* at the Court of Guard, where before the souldiers he put off his Hat and blessed him, and openly commanded he should be brought up in his Father's Principles and Religion; saying, that though hereafter he came to that end which he was going to, he could not chuse but die Happily and Nobly. These expressions so moved the Souldiers, that he left the most barbarous with tears in their eyes.

The first day of Trial he was led out of the Tower by one *Foster*, a Captain of the Lieutenants Regiment, (the Villain that shot Sir *Charles Lucas* and Sir *George Lisle*) who held him alwaies by the hand. By reason of his swoln face, he was last ready, so that the Prisoners staid expecting him at the Water-gate; which displeas'd the Captain so much, that he told him he was very lazy, for the Prisoners had staid an hour in the cold. M^r *Mordaunt*, when he saw the Prisoners, begg'd their Pardon, who seeing his condition were easily satisfied. But *Foster* said, he could not blame his stay, for never man went out to Trial so sure to lose his Head.

Head. This was said publickly; which gave Mr *Mordaunt* occasion to ask him if he were one of his Judges; and protest he could never be satisfied he ought to plead before those who did in effect condemn him before-hand: For the Lieutenant had said as much too. This *Foster* offered to give him a hundred pounds for a Piece, if he escap'd: yet after (having received the money) was taken off his wager by Lieutenant Col. *Miller*.

Tuesday the twenty fifth of *May* the three Prisoners. Sr *Henry Slingsby*, Dr *Hewet* and Mr *Mordaunt*, being in the Court of Requests, Sr *Henry Slingsby* was carried to Trial. The Court adjourn'd till *Thursday*, from *Thursday* it adjourn'd till *Tuesday June* the second; in which time it pleased God to strike such a horror into *Mal-lory* of the hateful part he was to perform, by appearing personally against two such eminent persons, that by the assistance of a maid which served Mr *Mordaunt* he took a Disguise and a Purse she brought him, and made an escape out of prison, lying concealed till Mr *Mordaunt's* Trial was over; and then being unfortunately re-taken, was imprisoned in the Tower the rest of *Cromwell's* life.

This, together with Mr *Mordaunt's* Aposteme,
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of which he had like to have died in the Tower, his *Ladie's* Note, sent whilest he was in the height of his debate, and Colonel *Pride's* going out, were the wonderful Providences it pleased God to use for the preservation of this Gentleman. D^r *Hewet* was tried first, and not suffered to plead. M^r *Mordaunt* seeing him returned, asked him how he was tried. He said he could get neither Jury nor Counsel, and insisting for both, was hurried away; but he pray'd God to bless him with better fortune.

M^r *Mordaunt* being brought to the Barre, he put on his Hat, and sat unconcernedly down before the President; who rose, and told him there was a respect due to the Court he performed not, and spoke to Serjeant *Dendy* to take off his Hat: which M^r *Mordaunt* perceiving, to prevent him, threw it away himself.

T H E

Beginning of his *Trial*, which lasted almost till Night.

M^{R Phelps Cl.} *John Mordaunt* Esquire, thou standest here charged with *High-Treason* against his Highness the Lord *Protector* and the Commonwealth: you have heard the Charge read, the Court demands your positive Answer thereto, whether Guilty or not Guilty.

M. MORD. I desire I may hear the Commission read by which you sit.

L. PRES. You are impeached of *High-Treason*, we require your Answer.

M. MORD. I desire the Commission may be read, and the Commissioners names.

L. PRES. You are to be tried by the Laws of *England*, Act of Parliament, and Commission of the great Seal of *England* in pursuance of that Act.

M. MORD. I claim it as my Right, I am ignorant in the Law, I desire it may be read.

L. PRES. It is not granted to any.

M. MORD. Will you take away that Liberty, that we shall not know by what Commission

we are tried, nor who are our Judges? I desire I may not be made the first Precedent.

L. PRES. It is visible who are your Judges, they are named by Act of Parliament. We are your Judges.

M. MORD. It appears you will be, though I am not satisfied in it: but the Act will not bear that it must not be read. I desire a Legal and just proceeding.

L. PRES. The Act of Parliament doth not require it.

M. MORD. The Act not denying it, it follows, it is my Right.

*Miseria servitus ubi
Lex est vagum aut
incognitum.*

L. PRES. You shall have all the Privilege that may be, but you must first plead.

M. MORD. My Lord, I demand this, to have the Commission read.

M. ATTORN. GEN. My Lord, pray let him know what is done, to warn him, lest he fall into the same condemnation. There was one but a little before you that demanded the same thing, and the Court hath ruled it otherwise, and he hath received his Sentence: I tell you of it, that you may beware, and know how to carry your self. If Mr *Mordaunt* will be pleas'd to answer whether Guilty or not Guilty of those Crimes, then he shall have

have a fair Trial, and full Examination: if otherwise, the same Sentence must be required as before; that is, upon refusal, the Judgment pronounced for *High-Treason*.

M. MORD. My Lord, I desire the Act may be read.

M. ATTORN. GEN. The Act is publick, the Court is not to give you an account of their Authority, or the way of their proceedings; they require your Answer.

M. MORD. My Lord, shall I not know by what Law I am tried, nor by what Act, nor by what Commission?

M. ATTORN. GEN. You seem to be a yong Gentleman; I wish you would rather plead not Guilty, or make an ingenuous Confession.

M. MORD. My Lord, truly it appears this Gentleman is for the *Protector*; I am for my self, and resolv'd not to lose my native Rights. I desire I may have Counsel assign'd to argue it with this learned Counsel. If this Counsel convince mine, I will submit; if on the contrary, what I demand I expect will be allowed me. This is the first time I have been before any Court in my life. I desire that my Reason may be convinc'd, and to know if the *Protector's* Counsel will say I am debarr'd hearing
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the Commission and Act read: however I shall referre it to the Judges of the Land, by whose Opinion I will stand or fall.

M. ATTORN. GEN. My Lord, you have offered that Gentleman very seasonable advice, I wish he may be capable of it; and in these debates I wish he doth not lose those advantages that are really intended for him. For the Court, it is by Act of Parliament, and no Judicature in *England* can require any account of their proceedings. Your Papers, Mr *Mordaunt*, were better laid aside, they will prejudice you.

M. MORD. With your leave, Sir, I shall not quit them. Pray give me leave to ask this Question, whether there be any precedent for this.

M. ATTORN. GEN. By way of advice I do acquaint you, that there is no Judicature in *England* superior to this, but the Parliament immediately. You are here impeach'd of a very high Crime, *High-Treason*; it may be a straying of Youth: the first step to Mercy is Confession.

M. MORD. Sir, I humbly thank you, yet shall not betray mine own Innocence by confessing a Crime; I will never know *Treason*, and being Innocent I shall need no Mercy. My
Lord,

Lord, I have heard that the Judges of the Land are the best and most proper Expositors of the Law, and I cannot but wonder I see none of them here: If they declare that this is the sense of the Act, I'll submit to the Court; if the Court will allow me Counsel, I shall submit if my Counsel be convinced. I desire to hear the Commission read.

M. ATTORN. GEN. My Lord, this Gentleman was a fellow-Prisoner with one that went before him, he walks after the same steps; I wish he may not run into the same Error: these things were urg'd by Dr *Hewet*, and the Court hath ruled that their Authority is sufficient; and therefore, my Lord, be pleas'd that this Gentleman may plead.

M. MORD. My Lord, I see I shall be overborn both as to Counsel and Jury, and that you endeavour not to convince me. Will this Counsel give it under their hands that this is Law by the Act of 1656? If you will say under your hands that this is Law, that I shall be excluded of Jury and Counsel, and that I must not know the Commission by which I am tried, I will proceed.

L. PRES. I am afraid you have received ill advice from others; possibly you know what

is become of that Prisoner that spake of Counsel : we cannot assign you Counsel as to matter of Fact. The Law and Act of Parliament have made us your Judges, and therefore you are to plead.

M. MORD. My Lord, I desire that that Act may be read, to know whether I am to be excluded of Jury and Counsel ; I durst referre it to the Counsel against me.

M. ATTORN. GEN. I doubt the Gentleman is in jest : We are here to attend by command of his Highness the Lord *Protector*, these Gentlemen are all sworn by Act of Parliament ; it is a little slighting of the Court to appeal from the Court to the Counsel. But, my Lord, I beseech you he may forbear to say he is overborn. You shall have Justice done if you plead ; if not, there was a Precedent but now : if you please to put your self upon the Trial, you shall have a fair Trial.

M. MORD. My Lord, I hope it will be understood frank Ingenuity to referre my self to the *Protector's* Counsel, and not slighting the Court : neither am I convinced by this Act that I am to lose the right of Jury ; I have not heard any Reason why I must lose it : I shall insift upon a fair Trial.

M. ATTORN.

M. ATTORN. GEN. I do tell you the Court hath given Judgement just now in the like Case.

M. MORD. I ask a Precedent for this.

M. ATTORN. GEN. I tell you a Precedent, *S^r Henry Slingsby* and *D^r Hewet*.

M. MORD. Is it a good Precedent? if any give an ill Precedent, it is no reason I should follow it, but debate it my self.

M. ATTORN. GEN. I humbly conceive that this Court is your Court, and that you ought to plead to it.

M. MORD. If I could conceive this Court were so, I would plead. My Lord, I desire I may be heard; 'tis hard I should be excluded those Privileges my Ancestors have so often sweat and bled for, in purchasing the Rights of the Great Charter, and the Petition of Right. I am told, I have just claim both to Counsel and Jury. And indeed I suppos'd that in this place, which is so famous for Administration of Justice and Law, I should not have been debarr'd what appears to me to be so: but since I cannot obtain the having the Act read, I shall as well as I can explain my sense of it. The words are these, That *the respective Commissioners or the major part of them are*

to meet, &c. The major part only having power to meet and adjourn, and not to determine and try, and in seventeen there is no major part, the whole being 150. now I humbly conceive without the whole I cannot be try'd.

L. PRES. All this that you ask of us now we have declared this morning already to one who was before you at the Barre. The *Quorum* of this Commission is seventeen, or any more of them. We must require you again to plead.

M. MORD. My Lord, I desire a little Patience. That the Number of Commissioners to try is seventeen, I conceive must be very much forc'd, because the words relate to the respective Commissioners. Several Persons were allowed Counsel, I desire Counsel.

L. PRES. That is when there is matter of Law; you have alledged nothing, you are now upon matter of Fact.

M. MORD. My Lord, my Indictment is matter of Law, and upon that I may safely demand Counsel; I desire to have Counsel as to my Indictment.

L. PRES. Your Reason, and my Reason, and all Reason must submit to the Law: you
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are now upon matter of Fact; the single Question is, Whether Guilty or not Guilty?

M. ATTORN. GEN. My advice to you is, that you would put your self upon your Trial.

M. MORD. I am clearly resolved not to put my self upon a Trial that never had a Precedent; neither am I so mean to doe it, did I respect the Liberties and Privileges only of my Country-men.

M. SOL. ELLIS. I will tell you where this Mistake is: He speaks of former Trials, which we do not deny; but this Gentleman will agree that it is in the power of Parliament, by Acts of Parliament to alter those Trials. We conceive that this Act of Parliament hath determined this very question; for, my Lord, it is that you shall examine upon Oath, and thereupon proceed to Conviction, and final Sentence; not by Jury. And this Act of Parliament hath entrusted you to be both Judge and Jury. All *English*-men must submit to what the Parliament hath done; and the Parliament hath determin'd this Question, that you have power to examine upon Oath, and thereupon to proceed to Conviction, &c. If a Jury was to doe it, you were not to proceed to Conviction. This Gen-

tleman saies there is no Precedent for it ; but we say it was the same in Queen *Elizabeth's* time. They proceeded to Conviction, and final Sentence, when they proceeded against Duke *Hamilton*, Lord *Capel*, and *Holland*. Did not the Parliament approve of what they did in that case as Just, Honourable, and Lawful ? Did not Duke *Hamilton* ? Did they not all Petition the House ? Did not the Parliament order Execution upon some, and Cleared others ? To say this is without Precedent, when Precedents are so frequent, I wonder that should be said. To that point of a Jury, I must tell this Gentleman, he speaks of a Jury, but hath not put himself upon Trial ; after he hath pleaded not Guilty, then it must be considered the manner of the Proceeding : but to come before he plead Guilty or not Guilty to desire a Jury, this is a little to anticipate your Judgement.

M. MORD. My Lord, I am concern'd for the fatal Precedent that Learned Gentleman gives of the Queen of *Scots*, it being in my opinion the greatest blurre to the Justice of Our Nation, and for which we may yet suffer. But allow that for a Precedent, our Cases are strangely different : She a Sovereign
Queen,

Queen, and how to get a Jury of Kings and Queens to have fate upon her would have been hard: Next, She was a Foreiner, and ought to have had six of her own Country to six of Ours, which could not be found: To this, my Lord, the next Parliament pardoned all those in particular fate upon her, as having done an action Questionable by the Laws of the Land.

I, my Lord, am an *English*-man, very well known, and have a right to the Great Charter and Petition of Right, which She had not, and therefore desire Jury and Counsel.

M. ATTORN. GEN. The Parliament hath thought fit to go this way, and it is not to be disputed; they that live in this Nation are not to dispute it. If that Gentleman will please to recollect himself, and not, my Lord, thus Expostulate and Dispute with the Court of Justice; if he please to put himself upon Trial, if he thinks himself Innocent, I think it best: and if he refuse it, his Sentence is from himself.

M. MORD. I am not Convinced at all, but forced upon it, and it is a hard thing that my Reason should not be Convinced. If this Act doth say in any place, that I must lose those

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Privileges, or if the Judges will declare it to be so, I will submit to it: If the Judges will declare that I must be try'd thus, God's will be done; I desire to stand and fall by the Laws.

M. ATTORN. GEN. We are clearly of opinion we have not power in this to appoint any other Jury, nor to summon a Jury, we our selves having taken an Oath: you would doe well to plead.

M. MORD. I do not shun to be try'd by Act of Parliament, but refer my self to the Judges, that those Privileges of the Act may not be taken from me. If I am not suffered to dispute the Power of the Court, yet I desire my Reason may be convinc'd, and that I may have Counsel.

Here he was interrupted, and a silence in the Court, occasion'd by a Note handed to the President, and from him to the Lieutenant of the Tower, who got it delivered to the Prisoner. The Note contain'd these words: For God's sake plead, plead for my sake, and stand disputing it no longer.

Upon the receipt of this, the Prisoner chang'd his Resolution, mov'd thereunto by the great Kindness and value he had for his Lady, who being at the Hall-door in a Coach,

Coach, had received information that unless he presently pleaded, he was lost: upon which her Uncle the Earl of Monmouth got her to write the Note, and himself carried it to the Court.

By this it appears how miraculously God preserv'd this Gentleman, just as he was to be forc'd away, to Inspire his Lady the means to save him. 'Tis certain, that She is an extraordinary Person, and never Woman so much oblig'd an Husband, nor did him so many essential good Offices.

M. MORD. My Lord, I have but little to say; I desire to know whether the Court doth intend to try me by a Jury.

M. SOL. ELLIS. They do not.

M. MORD. Is the Court Judge and Jury?

M. ATTORN. GEN. Yes: if you will deal Ingenuously with the Court, I think that is best.

M. MORD. Seeing I am here over-ruled, though not convinced in my Reason, I shall demurre to the Jurisdiction of the Court, and plead, not Guilty. I desire a Copy of my En-dictment, and time to plead.

L. PRES. It was never done: for any In-dictment of *High-Treason* was never delivered to any Prisoner.

M. MORD. I urge my Lord *Cooke* for Au-
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thority,

thority, for a Copy of my Indictment.

M. PHELPS. *John Mordaunt* Esquire, you stand here Charged of *High-Treason*: to this Charge you plead, not Guilty. Is this your Plea?

M. MORD. Yes. I beg, my Lord, that my Ignorance of the Laws may not prejudice me, not understanding or knowing any thing of the Law: and this granted me, I shall address to my Justification.

M. ATTORN. GEN. Do you stand to your Plea, not Guilty?

M. MORD. Why, yes.

M. LETCHMORE. My Lord, I shall open the Impeachment. The Attourney General hath exhibited a Charge of *High-Treason* against *John Mordaunt* Esquire, viz. That he, the said *John Mordaunt*, intending to Imbroil this Nation in new and intestine Warres, the 30th of *April* last past, and at divers times since the tenth of *October* 1656, together with *Henry Bishop*, *Hartgil Baron*, &c. at the Parish of *Clement Danes* in the County of *Middlesex*, did traitorously, advisedly and maliciously plot, contrive and endeavour, First, to stirre and raise force, and levy Warre against his Highness the Lord Protector, and the Commonwealth,

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to subvert and alter the Government of the same : Secondly, that he did traitorously, advisedly and maliciously Declare, Publish and Promote CHARLES STUART to be *King of England, Scotland, and Ireland* : Thirdly, that he did traitorously, advisedly and maliciously hold Intelligence and Correspondence with *Charles Stuart* : and that he did declare these *Treasons* by overt Act, that is to say, by conferring with *John Stapely* and *Henry Mallory* how to effect the same ; and did deliver several Commissions from *Charles Stuart* to several Persons, and this contrary to the Statute. To this Charge of *High-Treason* the Prisoner pleads not Guilty. We are ready, my Lord, to call our Witnesses to prove him Guilty of these several Crimes, and with leave of the Court we shall call our Witnesses.

M. ATTORN. GEN. I wish M^r *Mordaunt* had done this before, and made himself capable of more Favour.

Mr Mordaunt then desired to have pen, ink and paper : which was granted him.

John Stapely and Anthony Stapely were then called.

H

John

John Stapely *sworn.*

M. ATTORN. GEN. We produce this Gentleman (I suppose he is well known to the Prisoner) to prove the Charge. I desire he may declare what he knows.

M. ATTORN. GEN. What do you know concerning the discourses of Mr *Mordaunt* with you, touching the bringing in of *Charles Stuart*?

JO. STAP. I have been in Mr *Mordaunt's* company several times, and what I can say will not be much. Mr *Mordaunt* did once tell me there was such a Design as the bringing in of the *King*, and he did ask me if I did not know of such a thing. I told him no. He was pleased to tell me somewhat of it. I asked him if he was ingaged in it. He told me he was not.

M. ATTORN. GEN. What did he tell you concerning his being Intrusted by the *King* therein?

Here the Witneß spake so low the Prisoner heard him not, but desir'd Mr Stapely to turn his face to him, that the sound of his words might be heard.

JO. STAP. He told me the *King* wrote to him to speak to his friends that they would be

be ready to Assist him when he should come into *England* with Force, which he told me was with 7000 men: this was the chief of all.

M. ATTORN. GEN. Did he not say that he had Commissions from the *King*?

JO. STAP. He did not tell me so, but I have heard him say others had had Commissions; two other Gentlemen in *Surrey*.

M. ATTORN. GEN. Did he not encourage you thereunto? what Arguments did he use?

J. STAP. He spoke to me of it several times.

M. ATTORN. GEN. After what manner?

JO. STAP. Only in commendation of the thing. I heard him say that if there were a necessity, *Surrey* folks would come into *Sussex* to assist them.

M. ATTORN. GEN. Who was present at any of these discourses?

JO. STAP. There was none but my self and him.

M. ATTORN. GEN. At what Place, and at what Time?

JO. STAP. Near his own House at several times. I have told you the main of the Discourses.

M. MORD. Mr *Stapely*, about what Time was this?

Jo.

JO. STAP. Above a year since.

M. MORD. M^r *Stapely*, at what Place was the Encouragement made?

JO. STAP. I do not know what he means by Encouragement; he only told me of it.

M. MORD. I desire to know when I told you that I had received a Letter to encourage my friends from beyond Sea, and who was by.

J. STAP. There was no body by.

L. PRES. About what time did he tell you of that Letter?

JO. STAP. About half a year since.

L. PRES. Who was by?

JO. STAP. No body, my Lord.

M. SOL. ELLIS. Did he tell you it was the King that wrote to him, and therefore it was just to assist him?

JO. STAP. I think I heard him say so, I cannot take my Oath of it.

L. PRES. Did he tell you what considerable persons were concern'd?

JO. STAP. I have heard him speak of some persons that were engag'd in this Design; Sir *Francis Vincent*, and one *Brown*, and (I think) Sir *William Waller*.

L. PRES. When?

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JO. STAP. Above a year since, it was since the Parliament.

M. MORD. My Lord, we may all see the strange effects of fear; these worthy Gentlemen mentioned by Mr *Stapely* have clear'd themselves fully to the *Protector*: And what in his Examination at *White-Hall* he was forc'd to say, I blame him not for; but to mention them here, unless it were to their honours, I know not at what it tends, and need not justify them any further.

Anthony *Stapely* sworn.

M. ATTORN. GEN. What discourse have you had with Mr *Mordaunt* touching *Charles Stuart*?

ANT. STAP. We were about a quarter of a year ago at the *Half-moon* Tavern over against the New *Exchange*; at that time there was no discourse about the business at all. After that he was speaking to me about the Times, losses of Privileges, great Taxations, &c. wherein I agreed with him, and wish'd they might be better. I asked him if there was any way to help it. He said, Yea, and said that *Charles Stuart* was intending for *England*, and that would be a fair opportunity to redress all Grievances.

ces. At *Berkshire*-House there he was pleased to enquire concerning the affairs of *Sussex*, and in what preparation they were, in case the *King of Scots* should land. I told him, I did not know, I had not been in the Country lately ; I did believe that there would not be an appearance suitable to his expectation. He told me something concerning *Surrey*, that there was a considerable strength there ready to assist us in *Sussex*, and joyn with us when any such thing should happen ; he did say something about delivering out four Commissions, three for Horse, and one for Foot, to whom I know not ; I dare not swear it, but it is to the best of my remembrance.

M. ATTORN. GEN. What discourse past between you at the *Half-moon* Tavern about *March* last?

ANT. STAP. It was the day that the Cavalier party were to depart the City : there was Captain *Mallory*, my self, and this Gentleman M^r *Mordaunt*, and then he spoke again concerning *Sussex* ; that the *King of Scots* coming was suddenly expected ; and desired to know in what readiness we were. I told him I could not tell, but I did believe that things would be in as great a forwardness as the times would permit.

permit. It was agreed upon, that some of our Country should meet M^r Mordaunt at *Crawly* in *Surrey* upon the *Tuesday* following.

M. ATTORN. GEN. What was the end of your meeting ?

ANT. STAP. It was to consider further how things might be carried on as to the business of *Surrey* and *Sussex* ; there was an expectation of the landing of *Charles Stuart*, and he did say that he heard *Charles Stuart* was in a readiness. M^r Mallory, my self, and M^r Mordaunt were to meet, further to debate of things: I understood it was for the business of the King, but it was not positively so expressed. He asked me how things went on in *Sussex*. I told him I could not satisfy him. Therefore we told him, there should some of our Countrymen meet him at *Crawly* to give him an account. He said there was a considerable Force ; but I never heard him speak of any number of Horse or Foot in *Surrey*.

M. MORD. M^r Stapely, I desire to know when I spoke to you of this.

ANT. STAP. My Lord, it was, I cannot tell the daies, but it was suddenly after the breaking up of the Parliament ; all the discourses were since the breaking up of the last Parliament.

M. MORD.

M. MORD. I desire to know where I spoke this, and who was by.

ANT. STAP. As I take it, the first discourse was at *Long-Acre*, and no body by.

M. MORD. I desire to know the time when I met him at the *Half-moon Tavern*.

ANT. STAP. It was the day set for the departing of the Cavalier Party out of Town.

M. MORD. I desire to know who was by.

ANT. STAP. Captain *Mallory*.

M. MORD. I desire to know whether I did meet at the place appointed.

ANT. STAP. My Brother and M. *Mallory* did not meet him, because my Brother was sent for to *White-Hall*.

M. MORD. I desire to know the Witnesses to all he saies.

ANT. STAP. It was all private, only once at the *Half-moon Tavern* with Captain *Mallory*.

M. ATTORN. GEN. My Lord, there was mention made of one Captain *Mallory*, whom we did intend to have as a Witness; he was committed upon this Design, being privy to it: it hath so fallen out, that he is lately escaped: I desire that Mr Serjeant at Armes, Major *Ellison*, *Thomas Tatlock*, and *William Cappel* may be sworn.

All.

All four sworn.

Here the Prisoner sate down during their Examinations.

M. ATTORN. GEN. We do produce these Witneses for this end: Captain *Mallory* was a Prisoner, and we did intend to make use of him here: but it hath so fallen out, that his guilty Conscience hath made him to fly. Ask these concerning his being in Custody, and endeavour of Escape.

MAJ. ELLISON. My Lord, Captain *Mallory* was in Custody, and a Guard constantly set upon him, which Guard was relieved every twenty four hours. The manner of his Escape I only had by relation. We have used all endeavours to have found him since he was escaped: We did that night send presently to *Southwark* to Innes there, and laid wait for him, and sent to Captain *Mallory's* Brother-in-law, where he formerly lay, examined him, but all in vain; where we had any intimation of any relation of his, we did send to search for him.

SERJ. DENDY. My Lord, upon the 28th of *May* last, since the Escape of Captain *Mallory* I receiv'd a Warrant from the Council, com-

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manding me to use all diligence for apprehending of Captain *Mallory*. I have accordingly endeavoured it: Not knowing his Relations, I did not speak to them: I have used all means I could, but cannot find him.

THO. TATLOCK. My Lord, Captain *Mallory* went away about nine a clock at night: he went away in a black Suit and Cloak.

WILL. CAPPUT. All that I know, my Lord, is, that Captain *Mallory* was a Prisoner, and changed his habit and hair, went away, and left money in the window to pay for his Lodging.

M. ATTORN. GEN. My Lord, the intention is, to shew you Captain *Mallory* was a Prisoner, is escaped, and what means have been used for his apprehension. Officer, pray swear Mr *Scobel*.

Mr Scobel sworn.

M. SCOBEL. My Lord, Captain *Mallory* gave Information upon Oath before my Lord *Goff* and my self, upon the one and twentieth of *April* last, and upon his Oath did inform us, that about the beginning of *March* last Captain *Anthony Stapely* and himself being at the *Half-moon Tavern*, *John Mordaunt* Esquire being
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upon the *Exchange*, was sent for to M^r *Stapely*, and that he came: thereupon M^r *Stapely* presented Captain *Mallory* to M^r *Mordaunt*, as a Gentleman that was interessed in *Charles Stuart's* Design, together with M^r *Stapely*, that was his Brother; he said by that Brother he meant *John Stapely* Esquire. Thereupon he informed us, that M^r *Mordaunt* did demand of Captain *Mallory*, in what readines the Horse that were to be raised in *Sussex* were. M^r *Mallory* informed us, that to that he returned an Answer, that they were not in so good a posture as he did believe M^r *John Stapely* had represented to M^r *Mordaunt*, but doubted that it would fall much short. *Mallory* told us that at that Answer M^r *Mordaunt* did much wonder, because he said *Charles Stuart* the King was in a very good posture, and that there was a daily expectation of his coming over with his Forces: And that thereupon M^r *Mordaunt* did desire, that there might be a meeting in some convenient place between him and M^r *Stapely*, and such others of that County of *Sussex* as should be thought fit. My Lord, it was, he said, to this End, that there they might conferre together, and understand how the affairs stood in reference to the Counties of

Sussex and *Surrey*, that they might the better assist each other in the intended Insurrection. He did inform us, my Lord, that accordingly it was agreed there should be a meeting upon the *Tuesday* following at *Crawly*, and in order thereunto he said that Mr *Anthony Stapely* and himself did speak with Mr *John Stapely*, to have a meeting accordingly at *Crawly* upon the *Tuesday* following: and they did agree to it, he said, that they should meet with Mr *Mordaunt* at *Crawly*; but in the mean time Mr *John Stapely* being sent for to *White-Hall*, that meeting was prevented. My Lord, this is all.

L. PRES. Mr *Mordaunt*, would you ask Mr *Scobel* any Questions?

Here the Prisoner rose up.

M. SCOBEL. I suppose Mr *Mordaunt*'s asking me any Questions will not advantage him, or that my Testimony is disadvantageous to him; for all that I have spoke was the same that *Mallory* declared to me and my Lord *Goff* as Justices of the Peace.

M. MORD. My Lord, it will not concern me to ask any Question, no testimony being valid against me but what is *Viva voce*; to this,

I neither know this Gentleman nor M^r Mallory.

M. ATTORN. GEN. M^r Anthony Stapely, were you with Captain Mallory and M^r Mordaunt at Dinner together at the Half-moon?

M. ANT. STAP. My Lord, Captain Mallory was once there, but not at Dinner.

M. SOL. ELLIS. The Attourney General hath exhibited a Charge of *High-Treason* against the Prisoner at the Barre, that was to raise Force against the Government, and publish *Charles Stuart* to be King, and hold Correspondence with him.

Here the Prisoner made a little pause, and looked on his Papers, which he had just written on the Bar. His Defence was in these words:

M. MORD. My Lord, you have heard the Witnesses. The first Gentleman, M^r John Stapely, was pleased to urge against me that I said the King — [*Here he was interrupted. The President answers, You mean Charles Stuart*] — writ to me to engage my friends; but said not that he saw the Letter, or that any one was by; he did not name the Time or Place, but at random, but that I said so. Being asked about Commissions, he denies that I told

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him I either had Commissions, or delivered any. He saies I gave him Encouragement to this Engagement, or what he calls it I know not, but he doth not say what kind of Encouragement it was; he doth not say I promised him Money or Preferment. He saies, he heard I engaged two other Gentlemen, Sir *Francis Vincent* and Col. *Brown*; but saies not that I told him so: and I can make it appear the Information he speaks of was false. He was asked if any were by at these discourses: he said none was by. What can this be, but a bare single Evidence on news, or surmise? He saies it was a year or more since. He saies I was intrusted by *Charles Stuart* about the later end of the last Winter. This is the summe of his Accusation.

I shall now, my Lord, compare his Brothers with his, and how farre they are agreeing together let all the World judge, who will find they are no where of a Piece but in their Malice.

For Mr *Anthony Stapely*, he urges against me, that at his Lodging I discours'd with him, that the way to help us was to bring in *Charles Stuart*: which if true, might prove troublesome to me. And for *Surrey*, I have not been in
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it this year and half. He saies only, to the best of his remembrance, I said I had three or four Commissions: but he saies, it is to the best of his remembrance, but doth not say he saw the Commissions, and will not swear whether they were for Horse or Foot. He saies, at the *Half-moon* I spoke with him and *Mallory*; of whom I have already spoke. He saies I did not name the number of any Forces that were ready, and that, I said, (not should, but) would come into *Sussex*, if those Forces were oppressed. He saies we agreed to meet the *Tuesday* following at *Cranly* with Mr *Mallory*, but saies that I was not there. My Lord, I do not know that place. He saies it is in our Country; but it is not. He saies it was his Brother *John Stapely* was to meet me: He saies it was not about any positive thing I was to meet there, but in General, to carry on things about the intended Design. He saies not that I said it, but that I said I heard that *Charles Stuart* would land with a considerable Party. He saies it was to debate things in General. He said, it was not said about the *King*, that He was not mentioned, but he supposed it to be so: He saies positively, I never spake of any number of Horse and Foot, or

any thing of that kinde. I asked him when I first spoke of this; he returned no time, would not say any positive time, but said all was since the breaking up of the Parliament: I asked him who was by, he said, No body, all was private.

This, my Lord, can amount to no more then one single Testimony: and in *Rolph's* Case there was a single Witness to each Act; yet Serjeant *Mainard* being of Counsel, he satisfied the Court, one Witness could not condemn him, though it were for the greatest Treason imaginable, Attempts on the King's Person: and yet this *Rolph* had Counsel assigned him, and I am refus'd it.

He saies, the time when we were at the *Half-moon* was near the time when those that served the late King were banished. He saies positively, I did not meet at the place appointed, and he gives the reason, (a very insufficient one) because his Brother was sent for up: that could not hinder me. He waves his own meeting: he saies, all was private.

How little there is in this Evidence to bring me to such a Tribunal, I leave it to the world, who I am confident will be satisfied, base Fear
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and Malice in them, and not any Crime of mine, brought me hither: my Innocence makes me confident, and I referre my self to the Court.

M. SOL. ELLIS. The Charge is for Levying Warre to alter the Government, and imbroil us again in a new Warre, to which he pleads not Guilty. For the proof of this we have offered to you Witnelles: I shall take them in order as the Gentleman did at the Barre.

John Stapely said, *Mr Mordaunt* said the King writ to him, to encourage and engage his friends to assist him at his Coming; but saies not the Time when this was done. He saies he did not see the Letter; but saies *Mr Mordaunt* told him he had a Letter. By all the discourses (because that he saies there was no Time) it agrees that they were since the tenth of *October* 1656. And so it is clear within the Act, and within your Jurisdiction.

Now see how it was carried on. After he had told him this, how doth he encourage him, in telling him the Justice of the Cause, the Persons engaged therein, and of *Sir William Waller*? Then, my Lord, he told him, that if the Forces of *Sussex* were not sufficient, the *Surrey* Forces would come to assist them, for

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the coming in of *Charles Stuart*. This both *John* and *Anthony Stapely* say: so that we conceive, under favour, that both *John Stapely* and *Anthony Stapely* do agree in most of the Circumstances.

Anthony Stapely saies that Mr *Mordaunt* came to him, tells him there were great Grievances. I, saies he, but how shall it be remedied? Tells him that *Charles Stuart* intended to come to *England* with a great Force, which would redress them. He asked him how the business was in *Suffex*. He said, it was not in so good a posture as he expected. He said that *Surrey* Forces should joyn with *Suffex*.

My Lord, I leave it nakedly to you; if we finde this to be true, we submit it to you: and Mr *Attorney General* will pray what his place requires.

M. ATTORN. GEN. You have heard the business: this Gentleman hath interposed himself where he was not called: it is a happiness this business was discovered: upon this evidence I leave it to your Justice. Judge as you please: I shall say no more.

M. MORD. My Lord, I shall speak to you very short, it is this; That to all this, though it be urged against me by the ablest men of
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the Law, yet there is but one Witness in a manner, and that differing in many Circumstances — [*Here he was interrupted*] — My Lord, I am forc'd to leave it to you, and must remit my Life into your hands, expecting you will remember of what Nation I am, an *Englishman*: I must leave it to you, and God's will be done.

L. PRES. Withdraw the Prisoner.

The third of June the Prisoner being brought to receive Sentence, the President spake as followeth:

L. PRES. I have now a word to speak to you, M^r *Mordaunt*: God hath appeared in Justice, and God doth appear in Mercy. As the Lord is Just to them, so he is exceeding Merciful to you: and I may say to you, that God appears to you at this time as he speaks to Sinners in *Jesus Christ*: for, Sir, he doth clear Sinners in *Jesus Christ* even when they are Guilty; and so God cleareth you. I will not say you are Guilty, but ask your own Conscience whether you are or no. Sir, bless God as long as you live, and bless my Lord Protector, by whose Authority you are cleared.

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Sir,

Sir, I speak no more, but beseech you to speak to God.

To this the Prisoner made no Answer.

The Sentence being passed against Sir Henry Slingsby and Doctor Hewet, the Judgement of the Court was declared concerning Master Mordaunt, which in short was,

That upon consideration of the whole matter, in reference to the Charge against him, and his Plea thereunto, they did adjudge him not Guilty.

The Number of his Judges were thirty nine, whereof nineteen condemn'd him, and nineteen acquitted him; the *President's* voice turn'd the Scale. The Souldiers were wholly against him, except one. He was the first that ever was acquitted by a *High Court of Justice*.

After Sentence pronounced, the Prisoners were guarded back to the Court of Requests; from thence *Sr Henry Slingsby* and *Doctor Hewet* were return'd to the *Tower*: And *M^r Mordaunt* left without Guard in the Chamber, as he was

was taking leave of his Keeper, and appointing him to come to him about some Expences in the *Tower*, the Lieutenant sent to him, to let him know that he was to goe back to the *Tower* with him. Mr *Mordaunt* refus'd it, and insisted upon his publick Acquittment and clearing, saying, he was tried in vain, if after all his persecution and being found innocent, he was still kept Prisoner. He demanded on what account he was returned back, and whether the Court had not Power to release him. To this he was answer'd, he was confin'd by a double Power the *Protector* had, and was only cleared as he was *Protector*; but as *General* he was still his Prisoner: and until he had a Warrant from the *Protector* directed to him for his Release, he would not free him; he acting as an Officer of the *Protector's*, not as an Officer of the *High Court*. Notwithstanding all Mr *Mordaunt* urg'd, he took him back in his Coach. The tenth of *June* he was not released. Being released, he unexpectedly came into *Berkshire-House* as they were at Supper, & was received with all the affection imaginable by the Countess of *Peterburgh* his Mother, who was infinitely concern'd for him during all his Persecutions, and assisted him in making all

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the Friends she could. All his Relations there were joy'd to see him safe, whom they had so often lamented as lost.

The Lieutenant, after he was freed, confess'd never any man was us'd so ill; but it was not long of him, but them above, and a *French* Servant Mr *Mordaunt* had, who would have betray'd him, and confess'd several Instruments and means were used and conceal'd in order to an Escape. But after a strict search nothing was found, & the Villaine imprison'd for an Impostor; though what he told was precisely true.

He was twice sent for out of the *Tower* to *White-Hall*, & was upon Examination till Night, and the subtilest waies used to bring him to Confession: But resolv'd to know nothing might hurt a third Person, he vertuously stood the shock of *Cromwell's* fury, and left him, though enrag'd, in admiration of his Temper and Constancy. And Colonel *Goffe*, to whom *Cromwell* committed the last part of his Examination, gave him the Character of a *Confident Resolv'd Cavalier*.

F I N I S.



